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Amanah Raya Bhd (suing as administrator of the estate of Raja Nong Chik bin Raja Ishak, deceased) v Raja Rajmah bt Raja Chik & Ors (Raja Delia bt Raja Nong Chik & Ors, proposed interveners)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–432 OF 2004

LOW HOP BING, SULONG MATJERAIE AND RAMLY ALI JJCA

8 MAY 2009

Civil Procedure — Parties — Intervention — Application to intervene at Court of Appeal — Provisions of O 15 r 6(2)(b) of the Rules of the High Court 1980 applicable — Whether applicants had sufficient interest to intervene

This application, by way of notice of motion filed by the proposed interveners, seeking leave to intervene in the appeal as the second to sixth appellants. The applicants' were the lawful beneficiaries of the estate of the deceased in question and they had beneficial interest in that estate.

Held, allowing the application with costs in the cause of the appeal:

(1) As the Rules of the Court of Appeal 1994 made no provision to regulate the instant application, r 4 thereof mandates that the Rules of the High Court 1980 ('RHC') shall apply mutatis mutandis. In this regard, O 15 r 6(2)(b) of the RHC gives the court wide discretionary powers to grant leave to intervene. The applicant must show his interest in the cause or matter in dispute or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter (see para 2).

(2) The applicants' beneficial interest was clearly and directly related to the subject matter of the instant appeal. The applicants' right against or liability to the other parties, who also included the other lawful beneficiaries in the same estate, would be directly affected by any order which may be made in the appeal. The applicants had fulfilled the test of establishing their interest for the purposes of obtaining leave to intervene (see para 4).

[Bahasa Malaysia summary

Permohonan ini, melalui notis usul yang difailkan oleh pencelah-pencelah dicadangkan, memohon izin untuk mencelah dalam rayuan sebagai perayu-perayu kedua hingga keenam. Pemohon-pemohon adalah

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benefisiari-benefisiari sah harta pusaka si mati dalam kes ini dan mereka mempunyai kepentingan benefisial dalam harta pusaka. A

Diputuskan, membenarkan permohonan dalam kuasa rayuan:

(1) Oleh kerana Kaedah-Kaedah Mahkamah Rayuan 1994 tidak membuat sebarang peruntukan untuk mengawal selia permohonan ini, k 4 dengan itu memandatkan bahawa Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') akan menggunapakai mutatis mutandis. Dengan itu, A 15 k 6(2)(b) KMT memberi mahkamah bidangkuasa bicara yang lebih luas untuk memberi izin untuk mencelah. Pemohon-pemohon mesti menunjukkan kepentingan di dalam kausa atau perkara pertikaian atau, sebagaimana kes tersebut, persoalan atau isu yang harus diputuskan antara dia dan mana-mana pihak kepada kausa atau perkara (lihat perenggan 2). B C

(2) Kepentingan benefisial pemohon-pemohon adalah jelas dan secara langsung berhubungan dengan perkara di dalam rayuan ini. Hak pemohon-pemohon terhadap atau liabiliti kepada pihak-pihak lain, yang juga melibatkan benefisiari sah yang lain dalam harta pusaka yang sama, akan secara langsung memberi kesan kepada perintah yang kemungkinan dibuat dalam rayuan. Pemohon-pemohon telah memenuhi ujian mewujudkan kepentingan mereka bagi tujuan mendapatkan izin untuk mencelah (lihat perenggan 4).] D E

Notes:

For cases on intervention of parties, see 2(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 5569–5612. F

Cases referred to

Inai Etike Sdn Bhd v Mohd Fadzil bin Wadi & Ors [1995] 4 MLJ 731, HC (refd)

Oscam SPA v Overseas Union Bank (Malaysia) Bhd & Anor; Lim Keng Siew & Anor (Third Parties) [1999] 3 CLJ 399, HC (refd) G

Rajoo a/l Selvappan & Ors v Abdul Bhari s/o Kader Ibrahim & Ors [2005] 6 MLJ 444; [2005] 7 CLJ 326, HC (refd)

Sanders Lead Co Inc v Entores Metal Brokers Ltd [1984] 1 WLR 452 (refd)

Soo Hong & Leong Kew Moi & Ors v United Malayan Banking Corp Bhd & Anor [1997] 1 MLJ 690, CA (refd) H

Takang Timber Sdn Bhd v Government of Sarawak & Anor [1998] 4 MLJ 42, HC (refd)

Legislation referred to I

Rules of the Court of Appeal 1994 r 4

Rules of the High Court 1980 O 15 r 6(2)(b), r 4

Appeal from: Civil Suit No S2–22-546 of 1998

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(Shook Lin & Bok) for the appellant/plaintiff.
(Cheang & Ariff) for the first, third, eighth & 11th respondents/defendants.
(Khairul Azman, Noorilan, Nooron & Partners) for the second respondents/defendants.
(Lee Hishamuddin) for the ninth respondents/defendants.
(Ranjit Ooi & Robert Low) for the tenth respondents/defendants.
(Lim & Yeoh) for the 12th respondents/defendants.
(Thomas Philip Kwa & Lou) for the 13th respondents/defendants.
(G Raghumaren & Co) for the interveners.

Low Hop Bing JCA (delivering judgment of the court):

[1] This application, by way of notice of motion in encl 19a, is filed by the proposed interveners, seeking leave to intervene in this appeal as the second to sixth appellants.

[2] As the Rules of the Court of Appeal 1994 made no provision to regulate the instant application, r 4 thereof mandates that the Rules of the High Court 1980 shall apply mutatis mutandis. In this regard, O 15 r 6(2)(b) of the Rules of the High Court 1980 gives the court wide discretionary powers to order any person to be added as a party ie to grant leave to intervene where:

(a) any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined or adjudicated upon; or

(b) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between the parties to the cause or matter.

[3] Order 15 r 6(3) thereof sets out the test for granting or refusing leave to intervene. For this purpose, the applicant or applicants must show his or their interest in the cause or matter in dispute or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter: *Rajoo Selvappan & Ors v Abdul Bhari Kader Ibrahim & Ors* [2005] 7 CLJ 326 (HC) at pp 331–332.

[4] It is common ground that the applicants herein are the lawful beneficiaries of the estate of the deceased in question, and that they have beneficial interest in that estate. This beneficial interest is clearly and directly related to the subject matter of the instant appeal: see eg *Sanders Lead Co Inc v*

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Entores Metal Brokers Ltd [1984] 1 WLR 452. The applicants' right against or liability to the other parties, who also include the other lawful beneficiaries in the same estate, would be directly affected by any order which may be made in the instant appeal. There can be no doubt that the applicants have fulfilled the test of establishing their interest for the purposes of obtaining leave to intervene: *Inai Etike Sdn Bhd v Mohd Fadzil bin Wadi & Ors* [1995] 4 MLJ 731; *Soo Hong & Leong Kew Moi & Ors v United Malayan Banking Corp Bhd & Anor* [1997] 1 MLJ 690 (CA); *Takang Timber Sdn Bhd v Government of Sarawak & Anor* [1998] 4 MLJ 42 (HC); and *Oscam SPA v Overseas Union Bank (Malaysia) Bhd & Anor; Lim Keng Siew & Anor (Third Parties)* [1999] 3 CLJ 399 (HC) (*Malaysian High Court Practice*, MLJ under O 15 r 6(2)(b)).

[5] We therefore unanimously allow this application and grant leave to the applicants to intervene in the instant appeal. Costs in the cause of this appeal.

Application allowed with costs in the cause of the appeal.

Reported by Kanesh Sundrum